

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JULIAN PRUNA,

Plaintiff,

-against-

**COMPLAINT**

Jury Trial Demanded

CITY OF NEW YORK; Police Officer EDWIN ESPINAL, Shield No. 20689; Police Officer MICHAEL FASCIANO, Shield No. 4276; and JOHN and JANE DOE 1 through 10, individually and in their official capacities (the names John and Jane Doe being fictitious, as the true names are presently unknown),

Defendants.  
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**NATURE OF THE ACTION**

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution.

**JURISDICTION AND VENUE**

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343 and 1367(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

5. This Court has supplemental jurisdiction over the New York State claims pursuant to 28 U.S.C. § 1367.

### **JURY DEMAND**

6. Plaintiff demands a trial by jury in this action.

### **PARTIES**

7. Plaintiff Julian Pruna (“plaintiff” or “Mr. Pruna”) is a resident of Richmond County in the City and State of New York.

8. Defendant City of New York is a municipal corporation organized under the laws of the State of New York. It operates the NYPD, a department or agency of defendant City of New York responsible for the appointment, training, supervision, promotion and discipline of police officers and supervisory police officers, including the individually named defendants herein.

9. Defendant Police Officer Edwin Espinal, Shield No. 20689 (“Espinal”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Espinal is sued in his individual and official capacities.

10. Defendant Police Officer Michael Fasciano, Shield No. 4276 (“Fasciano”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Fasciano is sued in his individual and official capacities.

11. At all times relevant defendants John and Jane Doe 1 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not

know the real names and shield numbers of defendants John and Jane Doe 1 through 10.

12. At all times relevant herein, defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of defendant City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

13. At all times relevant herein, all individual defendants were acting under color of state law.

### **STATEMENT OF FACTS**

14. At approximately 3:30 p.m. on August 3, 2012, plaintiff was lawfully in the vicinity of 40<sup>th</sup> Street and 5<sup>th</sup> Avenue in Brooklyn, New York.

15. Mr. Pruna was walking toward his cousin's home when defendants unlawfully stopped him.

16. Defendants illegally searched Mr. Pruna and the car he had been driving.

17. No contraband was found as a result of defendants unlawful search.

18. Plaintiff was arrested, handcuffed and taken to the 72<sup>nd</sup> Police Precinct.

19. Defendants subjected plaintiff to an unlawful strip search at the Precinct.

20. Plaintiff was eventually taken to Brooklyn Central Booking.

21. The defendants falsely informed employees of the Kings County District Attorney's Office that they had observed plaintiff in possession of marijuana and

prepared false paperwork to that effect, including an arrest report.

22. The defendants had not observed plaintiff in possession of marijuana.

23. At arraignment, the criminal charges against plaintiff were adjourned in contemplation of dismissal.

24. After spending over two days in custody, plaintiff was released.

25. Within ninety days after the claim alleged in this Complaint arose, a written notice of claim was served upon defendants at the Comptroller's office at 1 Centre Street, New York, New York.

26. At least thirty days have elapsed since the service of the notice of claim, and adjustment or payment of the claim has been neglected or refused.

27. An examination of Mr. Pruna, pursuant to New York General Municipal Law § 50-h, was held on or about January 22, 2013.

28. This action has been commenced within one year and ninety days after the happening of the events upon which the claims are based.

29. Plaintiff suffered damage as a result of defendants' actions. Plaintiff was deprived of his liberty, suffered emotional distress, mental anguish, fear, anxiety, embarrassment, humiliation, was unlawfully strip-searched and suffered damage to his reputation.

**FIRST CLAIM**  
**Unlawful Stop and Search**

30. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

31. Defendants violated the Fourth and Fourteenth Amendments because they stopped and searched plaintiff without reasonable suspicion.

32. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**SECOND CLAIM**  
**False Arrest**

33. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

34. Defendants violated the Fourth and Fourteenth Amendments because they arrested plaintiff without probable cause.

35. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**THIRD CLAIM**  
**State Law False Imprisonment and False Arrest**

36. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

37. By their conduct, as described herein, the individual defendants are liable to plaintiff for falsely imprisoning and falsely arresting plaintiff.

38. Plaintiff was conscious of his confinement.

39. Plaintiff did not consent to his confinement.

40. Plaintiff's confinement was not otherwise privileged.

41. Defendant City of New York, as an employer of the individual defendant officers, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

42. As a direct and proximate result of the misconduct and abuse of authority stated above, plaintiff sustained the damages alleged herein.

43. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**FOURTH CLAIM**  
**State Law Assault and Battery**

44. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

45. By their conduct, as described herein, the defendants are liable to plaintiff for having assaulted and battered him.

46. Defendant City of New York, as an employer of the individual defendant officers, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

47. As a direct and proximate result of the misconduct and abuse of authority stated above, plaintiff sustained the damages alleged herein.

**FIFTH CLAIM**  
**Denial Of Constitutional Right To Fair Trial**

48. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

49. The individual defendants created false evidence against plaintiff.

50. The individual defendants forwarded false evidence to prosecutors in the Kings County District Attorney's office.

51. In creating false evidence against plaintiff, and in forwarding false information to prosecutors, the individual defendants violated plaintiff's constitutional right to a fair trial under the Due Process Clause of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

52. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**SIXTH CLAIM**  
**Failure To Intervene**

53. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

54. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

55. Accordingly, the defendants who failed to intervene violated the Fourth, Fifth, Sixth and Fourteenth Amendments.

56. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.



**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against the individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

DATED: January 24, 2013  
New York, New York

HARVIS WRIGHT  
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